

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 14546, as amended, of Joseph R. Ney, pursuant to Sub-section 8207.2 of the Zoning Regulations, for a special exception under Paragraph 7106.11 to change a nonconforming use from grocery, first floor and basement, to grocery/deli, and dry cleaning drop-off and pick-up, first floor and basement in a R-5-B District at premises 2160 California Street, N.W., (Square 2530, Lot 100).

HEARING DATE: January 28, 1987

DECISION DATE: January 28, 1987 (Bench Decision)

FINDINGS OF FACT:

1. At the public hearing the application was amended to request a grocery/deli and dry cleaning drop-off and pick-up to be located on the first floor and/or basement.

2. The site, known as premises 2160 California Street, is located on the south side of California Street between Phelps Place and Connecticut Avenue. The site is located in an R-5-B District.

3. The site is basically rectangular in shape with a frontage of approximately 20 feet along California Street and a depth of approximately 80 feet.

4. The site is improved with a one-story plus basement attached brick structure. The subject structure and the adjacent building to the west appear to have been originally built for commercial use. The building adjacent to the west of the site is used for office purposes.

5. The R-5-B District extends in all directions from the site. The area is characterized by midrise and highrise apartment buildings.

6. Pursuant to Sub-section 8207.2 of the Zoning Regulations. The applicant is requesting a special exception under Paragraph 7106.11 to change a nonconforming use from grocery, first floor and basement, to grocery/deli, and dry cleaning drop-off and pick-up, first floor basement.

7. Certificate of Occupancy No. 140365, dated October 30, 1984, granted the applicant permission to use the basement and first floor of the building as a grocery.

8. The deli/grocery has been in operation since June of 1986, and the dry cleaning operation since September of 1986.

9. The facilities are operated by the site's tenant, Man Han. The tenant will also operate the proposed deli and drycleaning operation.

10. It appears that the site has continually been used for commercial purposes.

11. The tenant predicted that 95 percent of his business will come from the adjacent neighborhood.

12. Little, if any, vehicular traffic and parking demand will be generated by the proposed uses.

13. A microwave oven will be utilized at the site. No grill will be located at the site.

14. The proposed hours of operation are from 8:00 A.M. to 9:00 P.M. Monday through Friday and 9:00 A.M. to 8:00 P.M. Saturdays and Sundays.

15. The deli/grocery has approximately four deliveries a day, Monday through Friday. These deliveries take place between 8:00 A.M. and 3:00 P.M. There is only one delivery each on Saturdays and Sundays. This delivery is for newspapers.

16. The trash generated at the site is picked up twice a week. The trash pick-up is done from the alley at the rear of the property. The trash is either boxed or bagged.

17. The applicant is not proposing any additional signage, and no changes to the structure or to the siting are proposed.

18. No objectionable odor or vibrations are anticipated to be generated by the proposed uses.

19. The grocery use is first permitted as a matter-of-right use in the C-1 District as are the proposed uses.

20. By memorandum dated January 21, 1987, the Office of Planning (OP) recommended approval of the application. The OP is of the opinion that the applicant has met the requirements of Paragraph 7106.11 of the Zoning Regulations.

21. Advisory Neighborhood Commission (ANC) 1D filed a report in support of the application as the operation "would be a great convenience to residents of the entire ANC area," and the proposed change would satisfy the criteria for a special exception. The Board concurs.

22. The Sheridan/Kalorama Neighborhood Council submitted a letter to the record in support of the application.

23. Numerous neighbors of the site testified or submitted letters to the record in support of the application.

CONCLUSIONS OF LAW AND OPINION:

Based on the Findings of Fact and the evidence of record, the Board concludes that the applicant is seeking a special exception, the granting of which requires substantial evidence that the applicant has complied with the requirements of Paragraph 7106.11 and Sub-section 8207.2 of the Zoning Regulations.

Paragraph 7106.11 allows that the Board may approve a change of use for nonconforming use to a use which is permitted as a matter-of-right in the most restrictive district in which the existing nonconforming use is permitted as a matter-of-right, provided that:

7106.111 The proposed use will not adversely affect the present character or future development of the surrounding area in accordance with these regulations. Such surrounding area shall be deemed to encompass the existing uses and structures within at least 300 feet in all directions from the nonconforming use.

7106.112 The proposed use will not create any deleterious external effects, including but not limited to noise, traffic, parking and loading considerations, illumination, vibration, odor, and design and siting effects.

7106.114 The Residential Districts, the proposed use shall be either a dwelling, flat, apartment or a neighborhood facility.

The Board concludes that the applicant has met the burden of proof. A grocery store, deli and drycleaning pick-up drop-off operation are all first permitted as a matter-of-right in the C-1 District. The structure was built as a commercial structure and has a long history of nonconforming uses. The Board notes the overwhelming support the neighborhood has demonstrated for the operation.

The proposed use will not create any deleterious effects. All the operations will be confined almost entirely to the interior of the structure. Since it is expected that 95 percent of the business' customers will walk to the site, no significant traffic problems will result. The proposed use will be a neighborhood facility.

The Board further concludes that the special exception can be granted as being in harmony with the general purpose and intent of the Zoning Regulations and Map and it will not affect adversely the use of neighboring property.


Accordingly, it is ORDERED that the application is GRANTED SUBJECT to the following CONDITIONS:

- a. The operation of the facility shall be limited to the applicant.
- b. No fumes from cooking shall be vented outside of the structure.
- c. The hours of operation shall not exceed from 8:00 A.M. to 9:00 P.M. Monday through Friday and 9:00 A.M. to 8:00 P.M. Saturday and Sunday.

VOTE: 4-0 (Paula L. Jewell, Lindsley Williams, William F. McIntosh, and Carrie L. Thornhill to approve; Charles R. Norris not present, not voting).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


EDWARD L. CURRY
Acting Executive Director

FINAL DATE OF ORDER: APR 3 1987

UNDER SUB-SECTION 8204.3 OF THE ZONING REGULATIONS, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

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